[redacted]

[redacted]

October Term, 1921.

No. 344

SEVERINO ALBERTO,

Petitioner,

vs.

BONIFACIO NICOLAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS AND BRIEF IN SUPPORT THEREOF.

[redacted]

[redacted]

[redacted]

[redacted]

MEMORANDUM

The Subject Index and Table of Cases are omitted at the present time, because of the sudden illness of Lt. Col. William C. Rigby, counsel for petitioner.

They will be supplied within a few days, with the approval of the Court, upon Colonel Rigby's recovery.

In the Supreme Court of the United States

OCTOBER TERM, 1928.

No.

SEVERINO ALBERTO,

Petitioner,

v.

BONIFACIO NICOLAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

Petitioner, Severino Alberto, prays a writ of certiorari to review the judgment of the Supreme Court of the Philippine Islands, January 20, 1928, ousting him from the office of justice of the peace of Angat, Province of Bulacan, and placing respondent in possession of the office.

A rehearing was denied. (Apparently on February 2, 1928; R. 52.)

On July 7, 1928, MR. JUSTICE VAN DEVANTER of this Court made an order extending for forty days from that date (that is, until and including August 16, 1928) the time for presenting this petition for certiorari to this Court. (Appendix III, *infra*, *p.* 30).

QUESTION PRESENTED

May the Governor General, by his own act, transfer a justice of the peace from one municipality to another, under the

proviso added March 5, 1918, by Act No. 2768, to Section 206 of the Philippine Administrative Code, which reads,

> *Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another;

OR, is such a transfer, in effect, a new "appointment" within the meaning of Section 21 of the Organic Act, so as to require the consent of the Philippine Senate?

The Insular Supreme Court, by a divided court, six to three, held that the transfer needed the consent of the Senate.

STATUTES INVOLVED

Section 206 of the Philippine "Revised Administrative Code" of 1917 (Act No. 2711, approved March 10, 1917, as amended by Act No. 2768, approved March 5, 1918, adding the final *proviso*) provides:

> Sec. 206. *Tenure of office—Transfer from one municipality to another.*—A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice: *Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another.

Other provisions of the Organic Act for the Philippine Islands ("Jones Law", Act of August 29, 1916, c. 416, 39 Stat. 545), and Philippine statutes, are in Appendix I, *infra*, pp. 21–24.

Excerpts (translations) from the journals of the Philippine Senate and House of Representatives relating to the amendment of Section 206, *supra*, by Act No. 2768, approved March 5, 1918, adding the final *proviso* here in question, for transfers of justices of the peace from one municipality to another, are in Appendix II, *infra*, pp. 25–29.

STATEMENT

This was original *quo warranto* in the Philippine Supreme Court begun August 24, 1927, by the respondent here, Bonifacio Nicolas, as plaintiff, to oust the present petitioner (defendant below), Severino Alberto, from the office of justice of the peace of the municipality of Angat, Province of Bulacan,

and to reinstate Nicolas therein (R. 3–6; and Exhibits to Petition, R. 7–12). The present petitioner, defendant below, Alberto, answered through the Insular Attorney General (R. 14–16, with Exhibits R. 16–22), claiming the office in virtue of the Governor General's orders of July 2, 1927, directing a mutual transfer of the two justices of the peace. The case was tried on a "stipulation of facts" (R. 23–24, with Exhibits R. 24–36); and on January 10, 1928, the Insular Supreme Court by a divided court, six to three, handed down its "decision" (MALCOLM, J., with AVANCEÑA, C. J., and OSTRAND, JOHNS, ROMUALDEZ, and VILLA-REAL, JJ., concurring, R. 37–44; JOHNSON, J., dissenting, R. 44–47; STREET, J., dissenting, R. 48–49; and VILLAMOR, J., dissenting, R. 49–51), followed by its formal "judgment," January 20, 1928 (R. 51–52), in favor of the plaintiff below, respondent here, Bonifacio Nicolas, ousting this petitioner, defendant below, Severino Alberto, from the office of justice of the peace at Angat, and placing Nicolas in possession thereof.

It appears from the "stipulation of facts" (R. 23–24, with Exhibits, R. 24–36) that Bonifacio Nicolas, plaintiff below, respondent here, was appointed justice of the peace of Angat on February 14, 1920.[1] This petitioner, Severino Alberto, was similarly appointed justice of the peace of San Jose del Monte in the same province of Bulacan, on February 28, 1918; and each served in those places, respectively, until August 19, 1927, when, pursuant to the orders of transfer of the Governor General of July 2, 1927, they exchanged places with each other, over the protest of the present respondent, Nicolas, and after he had vainly endeavored to induce the Governor General to rescind the orders of transfer. Further, that on April 1, 1927, an "administrative complaint" was filed against Nicolas, then justice of the peace of Angat, by the municipal president, resulting in an investigation by the Judge of First Instance whose report substantially vindicated Nicolas of the charges against him but found that he had given cause for suspicion as to his impartiality because

[1] Nearly two years after March 5, 1918, the date Act No. 2708 was approved, adding to Sec. 206 of the Administrative Code the *proviso* for transfers of justices of the peace from one municipality to another.

of political activity in favor of the Nacionalista Party as against the Democrata Party. (*"Decision" of the Judge of First Instance, appended to the "Stipulation of Facts,"* R. 24–27). The Judge reprimanded him "to the effect that he must avoid hereafter giving cause for suspicion regarding partisanship and favoring any stated political party in Angat" (R. 26–27). The complainants against Nicolas appealed to the Governor General who declined to interfere with the finding of the Judge of First Instance; but, upon the recommendation of the Secretary of Justice, issued orders, July 2, 1927, directing an exchange of duties between the justices of the peace of Angat, province of Bulacan, and of San Jose del Monte in the same province, transferring Severino Alberto, the present petitioner, defendant below, from the position of justice of the peace for the municipality of San Jose del Monte to the same position in the municipality of Angat ("Exhibit B," R. 33), and similarly transferring Nicolas from the position of justice of the peace for the municipality of Angat to the same position in the municipality of San Jose del Monte ("Exhibit C", R. 32). Nicolas protested against the transfer, and requested its reconsideration (R. 33–35); which was denied; because, as Nicolas was later informed by the letter of the Secretary to the Governor General, August 30, 1927 ("Exhibit E," R. 36), "your transfer was made for the good of the service." Nicolas delivered possession of the office at Angat to Alberto, the present petitioner, defendant below, on August 19, 1927, under formal protest ("Exhibit G," R. 35).

The Insular Supreme Court, as above stated, found the Governor General's transfer orders of July 2, 1927, invalid; holding, by a divided court (R. 37–51, 40–41, 44) that such a transfer of a justice of the peace could only be made with the consent of the Philippine Senate.

After the denial of his petition for rehearing, the Insular Attorney General moved, on behalf of this petitioner, for a stay of execution pending this application to this Court for a writ of certiorari; and the stay was granted, February 3, 1928 (R. 52–53). The following day, February 4th, counsel for Nicolas filed an "opposition to notice for petition for a writ of certiorari and for a stay of execution" (R. 54–56), claiming that

the case had become moot because of a letter written by Mr. C. W. Franks, the Secretary to the Acting Governor General, on January 27th, after the entry of the Insular Court's "final judgment", but before it had disposed of the petition for rehearing. Mr. Franks' letter reads ("Exhibit A", R. 56):

> Office of the Governor General of the
> Philippine Islands,
> Manila, January 27, 1928.
>
> Sir:
>
> In view of the recent decision of the Supreme Court taking from the Governor-General the power of transfer heretofore, I have to advise that, upon the recommendation of the Honorable, the Secretary of Justice, the letter of this Office of July 2, 1927, transferring you from the office of justice of the peace of Angat, Bulacan, to the same position in San Jose del Monte, same province, is hereby cancelled.
>
> By authority of the Governor-General:
>
> C. W. FRANKS,
> *Secretary to the Governor-General.*
>
> MR. BONIFACIO NICOLAS,
> Justice of the Peace,
> San Jose del Monte, Bulacan
> (Through the Honorable,
> The Secretary of Justice, Manila.)

In reply, the Insular Attorney General, on behalf of this petitioner, set up (R. 57) that Mr. Franks' letter "was written and sent through inadvertence on the part of the office of the Governor-General", and filed a copy of an order of the Acting Governor-General, dated February 4th, reading ("Exhibit B", R. 58):

> Office of the Governor-General of the
> Philippine Islands,
> Manila, February 4, 1928.
>
> Sir:
>
> I hereby revoke letters of this Office dated January 27th addressed to Messrs. Bonifacio Nicolas and Severino Alberto, justices of the peace of San Jose del Monte, Bulacan, and Angat, Bulacan, respectively, cancelling their transfers as ordered on July 2, 1927. **The said letters were written and sent without my knowledge**

and by inadvertence on the part of my office personnel.

You are hereby notified that the original orders of transfer dated July 2, 1927, still stand and are in effect.

Very respectfully,

E. A. GILMORE,
Acting Governor-General.

The Honorable
The Secretary of Justice
Manila.

In a "counter reply" (R. 59–64) counsel for Nicolas attacked the good faith of the Acting Governor-General's statement in his order of February 4th, that Mr. Franks' letter of January 27th had been "written and sent without my knowledge and by inadvertence on the part of my office personnel"; counsel for Nicolas alleging (Par. I, "Counter Reply", R. 59):

> "That the Acting Governor-General's letter of February 4, 1928 (Exhibit B, Attorney General's reply), purporting to revoke the order of January 27, 1928 (Exhibit A, Plaintiff's opposition of February 4, 1928), was made-to-order after an eleventh hour conference between the Governor General, the Secretary of Justice, and the Attorney General, after they had realized, upon receipt of a copy of the plaintiff's opposition of February 4, 1928, that the order of January 27, which revoked the order of transfer of July 2, 1927 (involved in the quo warranto proceedings), would be fatal to the right of the Government to petition the United States Supreme Court for a writ of certiorari to this Honorable Supreme Court."

In support of their allegation counsel for Nicolas filed clippings from Manila newspapers purporting to set out the circumstances surrounding the issuance of the Acting Governor-General's order of February 4 (R. 59–63).

The court below, however, without discussing counsel's allegations, simply ordered, on February 7th, "that the same be noted and made a part of the record" (R. 64); and, upon counsel for Nicolas on February 10th moving for reconsideration of the stay of execution and for immediate execution of the judgment of ouster in his favor (R. 64–65), the court on February 11th formally denied that motion (R. 65), and allowed the stay of execution to stand. (Thereby, in effect,

adjudging that Mr. Franks' letter of January 27th was without effect, and that the suit had not become moot as counsel for Nicolas had claimed.)

OPINION BELOW

The gist of the opinion of the majority of the judges of the Insular Supreme Court (R. 37–44) is that, since the *proviso* to section 206 of the Administrative Code,

> "That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another,"

is "silent as to the office or entity which may make the transfer," therefore (R. 40–41),

> "The more reasonable inference, indeed the only possible legal inference permissible without violating the constitution, is that the justice of the peace may be transferred by the exercise of the appointing power, and the appointing power consists of the Governor General acting in conjunction with the Philippine Senate."

The dissenting justices in separate dissenting opinions (JOHNSON, J., R. 44–47; STREET, J., R. 48–49; VILLAMOR, J., R. 49–51) considered the Governor General empowered to make the transfer without the intervention of the Senate.

PETITIONER'S CONTENTIONS

It is the contention of the petitioner that the court below erred in holding that the transfer needed the consent of the Insular Senate; and that, on the contrary, the Governor General is empowered to make the transfer without the intervention of the Philippine Senate, because:

1. The transfer of a justice of the peace from one municipality to another under the proviso to Section 206 of the Philippine Administrative Code is not an "appointment" within the meaning of Section 21 of the Organic Act, requiring the "consent" of the Insular Senate to "appointments"; but such a "transfer," while akin to both appointment and removal, is the exercise of a distinct and separate administrative power. It is an executive function of government; which, under Sections 21 and 22 of the Organic Act, must be vested either directly in the Governor General or else in an executive de-

partment under the supervision and control of the Governor General. There being no provision of law expressly vesting it in one of the executive departments, it inheres in the Governor General, and, under the Organic Act, does not require the consent of the Insular Senate.

2. The legislative intent to recognize the power to make such transfers as an executive function, vested in the Governor General by the Organic Act, is manifest from the facts that:

(1) The proviso to Section 206 providing for such transfers is silent as to who shall make them, leaving them to be made in accordance with the distribution of powers among the different departments of the Philippine Government under the Organic Act,—viz., by the Governor General; and,

(2) This intent is reinforced by the fact that, as first passed by the Insular Senate, Act No. 2768 (Senate Bill 163), adding the *proviso* for such transfers to Section 206 of the Administrative Code, required the transfer to be approved by the Senate; but that requirement was struck out by the House; and the Senate afterwards concurred in the House amendment; thus expressly receding from its first intent to require Senate concurrence in the transfers. (Appendix II, *infra*, pp. 25–29.)

3. This case has not become moot. The letter of Mr. C. W. Franks, Secretary to the Governor General, January 27, 1928, is of no effect. Mr. Franks' letter, purporting to revoke the Governor General's orders of mutual transfer of these two justices of the peace, of July 2, 1927, was written, as expressly stated by the Acting Governor General in his orders of February 4, 1928, cancelling it, "without my knowledge and by inadvertence on the part of my office personnel". The transfer of a justice of the peace,—(and the attempted revocation was, in effect, an attempted transfer back of these two justices to their former positions),—is an executive function placed by Section 22 of the Organic Act "directly" in the Governor General, and could not be exercised by his secretary without his knowledge or consent. Mr. Franks' letter is a mere nullity; and had no effect on the status of this case.

REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law arising under the Organic Act, of general interest to the Government and People of the Philippine Islands. It has not been, and it is believed to be in the public interest that it should be, settled by this court. The decision by the court below was by a divided court, six to three.

WHEREFORE it is respectfully requested that this petition for a writ of certiorari to review the judgment of the Supreme Court of the Philippine Islands in this case be granted.

WILLIAM CATTRON RIGBY,
Lieutenant Colonel, Judge Advocate,
Attorney for Petitioner.

J. A. HULL,
Major General, The Judge Advocate General,

DELFIN JARANILLA,
Attorney General of the Philippine Islands,
Of Counsel.

BRIEF IN SUPPORT OF PETITION.

Opinion Below

The opinion of the Supreme Court of the Philippine Islands has not yet appeared either in the official Philippine Reports or in the Official Gazette of the Philippines.

The prevailing majority opinion, written by Mr. Justice Malcolm, in which Chief Justice Avanceña and Justices Ostrand, Johns, Romualdez, and Villa-Real concurred, is on pages 37 to 44 of the record. The dissenting opinion of Mr. Justice Johnson is on pages 44 to 47; that of Mr. Justice Street, dissenting, on pages 48 to 49; and that of Mr. Justice Villamor, dissenting, on pages 49 to 51.

Jurisdiction

The final judgment of the Supreme Court of the Philippine Islands was entered on January 20, 1928 (R. 51–52).

The record does not definitely state the date of the denial of the petition for rehearing or reconsideration; but the recitals in the record, and in the first paragraph of the Insular Attorney General's motion for a stay of execution pending this petition to this court for certiorari, indicate that the motion for rehearing was denied by the Philippine Supreme Court on February 2, 1928 (R. 52).

On July 7, 1928, Mr. Justice Van Devanter made an order (Appendix III, *infra*, p. 30) extending the time for presenting the petition for certiorari to this court for forty days from that date (that is, until and including August 16, 1928).

In this case the question is whether the construction placed by the Supreme Court of the Philippine Islands upon an act of the Philippine Legislature is in harmony with the Act of Congress known as the "Jones Law" which constitutes the Organic Act for the Philippine Islands, so that a statute of the United States is here involved.

Section 7 of the Act of February 13, 1925, gives this court power to review by certiorari a final judgment of the Supreme Court of the Philippine Islands in any case "wherein * * *

any statute * * * of the United States is involved". Section 8(a) of the Act of February 13, 1925, provides that "writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months" after the entry of the judgment to be reviewed: "*Provided*, That for good cause shown either of such periods for applying for a writ of certiorari may be extended not exceeding sixty days by a justice of the Supreme Court."

Question Presented

The question presented is whether the transfer of a justice of the peace from one municipality to another, under the proviso added March 5, 1918, by Act No. 2768, to Section 206 of the Philippine Administrative Code, reading.

> "*Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another";

is an executive function which may be exercised by the Governor General alone, by his own act, under Sections 21 and 22 of the Organic Act; OR, whether such a transfer is, in effect, a new "appointment" within the meaning of Section 21 of the Organic Act, requiring the consent of the Philippine Senate.

A collateral question is whether this case has become moot by reason of the letter of Mr. C. W. Franks, Secretary to the Acting Governor General, dated January 27, 1928 (R. 56), purporting to revoke the Governor General's order of July 2, 1927, directing a mutual transfer or exchange of stations between the two justices of the peace, parties to this suit; or whether, on the other hand, Mr. Franks' letter of January 27th was not simply void, because, as stated by the Acting Governor General in his letter of February 4, 1928 (R. 58), it was "written and sent without my knowledge and by inadvertence on the part of my office personnel".

Statutes Involved.

Pertinent portions of the Organic Act for the Philippines and of the Philippine statutes involved, together with excerpts from the journals of the Philippine Senate and House of Representa-

tives relating to the adoption of Act 2768 which added the *proviso* here in question to Section 206 of the Revised Administrative Code, are set out in the Petition (*ante*, p. 2) and in Appendices II and III (*infra*, pp. 21–29).

Statement

A statement of the case is in the Petition (*ante*, pp. 2–7).

Specification of Errors to be Urged; and Summary of Argument

The statement of "Petitioner's Contentions" in the petition (*ante*, pp. 7–8) contains specifications of the errors now urged, and summarizes the argument here following.

ARGUMENT

POINT I

THE "TRANSFER" OF A JUSTICE OF THE PEACE FROM ONE MUNICIPALITY TO ANOTHER IS AN EXECUTIVE FUNCTION OF GOVERNMENT VESTED IN THE GOVERNOR GENERAL BY SECTIONS 21 AND 22 OF THE ORGANIC ACT.

It is not an "appointment" within the meaning of the provision of Section 21 of the Organic Act requiring the "consent" of the Insular Senate to "appointments."

While "transfer" is akin both to appointment and to removal; it is, nevertheless, a separate and distinct kind of administrative act, and is the exercise of a distinct executive function.

That it is inherently an executive function is plain. It is not legislative nor judicial in its nature.

As an executive function, it is vested in the Governor General under Sections 21 and 22 of the Organic Act, making him the supreme executive power in the Philippines, charged with the responsibility for the faithful execution of the laws, and with the express provision (Sec. 22) that all executive functions must be directly under him or within one of the executive departments under his supervision and control. The only executive functions vested in the Legislature are: (1) that appointments to office must be with the consent of the Senate; (2) that each house appoints its own presiding officer, clerk, sergeant at arms, and other officials; and (3) that the Legislature elects "Resident Commissioners to the United States." (*Springer* v. *Government of the Philippine Islands*, and *Agoncillo* v. *Same, the "Board of Control Cases"*, decided by this Court May 14, 1928, 48 Sup. Ct. Rep. 480; *Sections 21, 18, and 20, Organic Act*, Appendix I, *infra*, pp. 21–22). All other administrative functions of government are to be discharged by the Governor General (or, if so provided by law, by an executive department under his "supervision and control"); both because they are executive functions inherent in the supreme executive power given him by Section 21 of the Organic Act and included within the responsibility for the faithful execution of the laws imposed upon him by that section, and also because

they are expressly vested in him by the *proviso* to Section 22 requiring that all executive functions be discharged directly by him or else by an executive department under his supervision and control. (*Springer* v. *Government of the Philippine Islands* and *Agoncillo* v. *the same, supra*). Removal from office is such an executive function. (*Myers* v. *United States*, 272 U. S. 52) Appointment is likewise an executive function, the sharing of the Senate in which, by giving its "consent", is really the exercise of an executive function by the Senate by virtue of the express provision of Section 21 of the Organic Act. (*Myers* v. *United States, supra; Springer* v. *Government of the Philippine Islands* and *Agoncillo* v. *Same, supra*).

The transfer of an officer from one district to another and the direction to him thereafter to perform his duties in the new location is likewise an executive function akin to appointment and removal; but is, nevertheless, a separate kind of executive act, which (not being expressly placed elsewhere by the Organic Act) is by the general terms of Sections 21 and 22, and under the tripartite form of government which the Act establishes for the Philippine Islands, vested solely in the Governor General.

POINT II

THE INTENT OF THE PHILIPPINE LEGISLATURE TO RECOGNIZE THE POWER TO MAKE SUCH TRANSFERS AS AN EXECUTIVE FUNCTION, VESTED IN THE GOVERNOR GENERAL BY THE ORGANIC ACT, IS MANIFEST; SINCE: (1) THE *proviso* TO SECTION 206 OF THE ADMINISTRATIVE CODE, PROVIDING FOR SUCH TRANSFERS, IS SILENT AS TO WHO SHALL MAKE THEM, LEAVING THEM TO BE MADE IN ACCORDANCE WITH THE DISTRIBUTION OF POWERS AMONG THE DIFFERENT DEPARTMENTS OF THE PHILIPPINE GOVERNMENT UNDER THE ORGANIC ACT,—VIZ., BY THE GOVERNOR GENERAL; AND, (2) THIS INTENT IS REINFORCED BY THE FACT THAT, AS FIRST PASSED BY THE INSULAR SENATE, ACT NO. 2768 (SENATE BILL 163), ADDING THIS *proviso*, REQUIRED THE TRANSFER TO BE APPROVED BY THE SENATE, BUT THAT REQUIREMENT WAS STRUCK OUT BY THE HOUSE, AND THE SENATE AFTERWARDS CONCURRED IN THE HOUSE AMENDMENT, EXPRESSLY RECEDING FROM ITS FIRST INTENT TO REQUIRE SENATORIAL CONSENT TO THE TRANSFERS.

(1).—*The proviso to Section 206 providing for such transfers is silent as to who shall make them, leaving them to be made in accordance with the distribution of powers among the different departments of the Philippine Government under the Organic Act,—viz., by the Governor General.*

A. That a "transfer" of a justice of the peace under the proviso of Section 206,

> "That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another",

is an administrative act or function of a separate kind, and is not either a "removal", nor an "appointment" within the meaning of Section 21 of the Organic Act requiring Senate consent to "appointments," but is a distinct, different, executive function inhering in the executive power under Sections 21 and 22 of the Organic Act, is plain from an examination of the nature of the tenure of office of a justice of the peace in the Philippine Islands.

The office of justice of the peace in the Philippines is not purely a local office. It is an office in the Philippine Government, whose incumbent is to discharge his duties either in the district for which he is originally designated or in that to which he may thereafter be transferred.

The justice of the peace is appointed by the Governor General with the consent of the Philippine Senate (Section 203, Revised Administrative Code; Appendix I, *infra*, p. 23), in accordance with the provisions of Section 21 of the Organic Act. He reports to, and is subject to supervision, investigation, suspension, and/or reprimand by, the Judge of First Instance (Secs. 228 and 229, Admin. Code; Appendix I, *infra*, p. 24); and is removable by the Governor General alone, either upon the recommendation of the Judge of First Instance or upon his own motion (*ibid*, Sec. 229). Upon the recommendation of the head of the Insular Department of Justice his territorial jurisdiction may be extended over any number of municipalities or other local political divisions or places not included in the jurisdiction of a justice of the peace already appointed (*ibid*, Sec. 203); or, upon like recommendation of the Department Head, the Governor

General may combine his office with that of one or more other such jurisdictions already established (Sec. 203, Admin. Code), and may thereby terminate his tenure of office (*ibid*, sec. 206); and the Governor General may designate in case of merger which of the justices affected by the change shall continue in office, the powers of the others ceasing (*ibid*, Sec. 204). The justice of the peace accepts office subject to those conditions, as well as to the *proviso* to Section 206 here in question:

> "*Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another."

Subject to all the foregoing limitations, his tenure of office is "during good behavior", "until they have reached the age of 65 years". (Secs. 203 and 206, Admin. Code.)

He is responsible to no local authority. No municipal or other local authority has to do, in any way, either with his appointment, removal, or transfer, or with defining or changing the boundaries of his territorial jurisdiction. His salary is fixed by Insular law and is paid by Insular funds (Secs. 220, 221, 222, Admin. Code; Appendix I, *infra*, pp. 23–24).

He is, therefore, in no sense a purely local official; but is an officer of the Insular Government, appointed by it, removable by it, paid out of the Insular Treasury, subject to having the boundaries of his jurisdiction changed or the jurisdiction itself merged in that of another justice of the peace, and his office itself thereby abolished by the administrative head of the central government, the Governor General; and, finally, subject to transfer by the central government to another district or another municipality where he shall continue to exercise his functions as a justice of the peace.

B. THIS *proviso* EXPRESSLY CONTEMPLATES "TRANSFER." It does not speak of it as a new "appointment";[1] does not

1. Herein plainly differing from the former provision in Section 155 of the Administrative Code, for "appointment" of a judge of first instance to be judge of another district, which was before the court in *Borromeo* v. *Mariano*, 41 Phil. Rep. 322. That provision of Section 155, since repealed, read: "but nothing herein shall be construed to prevent a judge of first instance of one district from being appointed to be judge of another district." (*Sec. 155, Act No. 2711, Laws of the Fourth Philippine Legislature.*) In the *Borromeo-Mariano*

require any new oath of office from the justice so transferred; makes no provision for a new acceptance of office by him.

C. ALL OF THE PROVISIONS OF THE ADMINISTRATIVE CODE RELATING TO JUSTICES OF THE PEACE ARE TO BE READ TOGETHER. (*Administrative Code*, Chap. 10. "Justices of the Peace", Secs. 203–230.)

So reading them, it is clear that the justices are not appointed to a purely local office in a particular municipality; but are appointed by the Philippine Government to be justices of the peace to discharge the duties of the office in the municipality originally designated, until or unless transferred to another municipality under the *proviso* to Section 206, or until or unless the boundaries of their jurisdictions are enlarged or decreased by action of the Governor General, or are abolished or merged, under Sections 203 and 204.

D. RESPONDENT NICOLAS WAS ORIGINALLY APPOINTED TO AND ACCEPTED THE OFFICE OF JUSTICE OF THE PEACE ON FEBRUARY 9, 1920 ("Stipulation of Facts", R. 23), NEARLY TWO YEARS AFTER THE APPROVAL, MARCH 5, 1918, OF ACT 2768, ADDING TO SECTION 206 THE PROVISO HERE IN QUESTION FOR TRANSFER OF JUSTICES OF THE PEACE FROM ONE MUNICIPALITY TO ANOTHER IN CASE THE PUBLIC INTEREST REQUIRES IT.

Therefore, he accepted office under the *proviso;* and while he was originally designated to discharge the duties of justice of the peace at Angat, he was bound to know that he was accepting the office subject to the liability of transfer to another municipality, in case the public interest should require it, under the terms of the *proviso*.

(2) *The intent of the Philippine Legislature to recognize the power of transfer of justices of the peace as an executive function vested in the Governor General by the Organic Act, is demonstrated and emphasized by the fact that, as first passed by the Insular*

---

case, the court held that a judge of first instance could not be compelled to accept such an "appointment" to be judge of another district. By express language, that provision contemplated an actual new "appointment" by the appointing authority; that is, by the Governor General with the consent of the Senate, and, necessarily, a new acceptance by the appointee.

Such "appointment" is a wholly different thing from the "transfer" of a justice of the peace contemplated by the *proviso* to Section 206 here in question.

Senate, Act No. 2768 (Senate Bill 163), adding the proviso for such transfers to Section 206 of the Administrative Code, required the transfer to be approved by the Senate; but that requirement was struck out by the House, and the Senate afterwards concurred in the House amendment, thus expressly receding from its first intent to require Senate concurrence in the transfer.

The legislative history is shown by the translations in Appendix II, *infra*, pp. 25–29, from the proceedings of the Philippine Senate and House of Representatives, February 8, 1918, relating to Senate Bill 163; which, upon its approval March 5, 1918, became Act No. 2768.

POINT III

THIS CASE HAS NOT BECOME MOOT.

The letter of Mr. C. W. Franks, Secretary to the Governor General, of January 27, 1928 (R. 56; *ante*, Petition, p. 5), is of no effect. Mr. Franks' letter, purporting to revoke the Governor General's orders of mutual transfer of these two justices of the peace, of July 2, 1927, was written, as is expressly stated by the Acting Governor General in his orders of February 4, 1928, cancelling it, "without my knowledge and by inadvertence on the part of my office personnel" ("Exhibit B," R. 58; Petition, *ante*, pp. 5–6). Full faith and credit must be given to the Acting Governor General's statement. Such a transfer of a justice of the peace is an act requiring executive judgment and discretion. Not being vested by law in any executive department, it is by the terms of the *proviso* to Section 22 of the Organic Act, vested "directly" in the Governor General; and must be exercised by him in person. The attempt of his Secretary to exercise it in his name,—but in fact without his knowledge or consent,—was a nullity. It has no effect on the orders of transfer of July 2, 1927, which had been signed by the Acting Governor General personally ("Exhibit C", R. 32; and "Exhibit B," R. 33); and, therefore, had no effect upon the status of this case.

CONCLUSION.

For the foregoing reasons it is respectfully urged that the orders of the Acting Governor General of July 2, 1927, mutually

transferring these two justices of the peace, were valid and should be upheld; and that accordingly the judgment of the Supreme Court of the Philippine Islands in this case should be reversed and this cause remanded to that court with directions to enter a decree or judgment in favor of this petitioner, defendant below, Severino Alberto, and against the respondent, plaintiff below, Bonifacio Nicolas, recognizing the title of this petitioner, Severino Alberto, to the office of justice of the peace of Angat, Province of Bulacan, and dismissing the complaint of the plaintiff, Nicolas.

WILLIAM CATTRON RIGBY,
Lieutenant Colonel, Judge Advocate,
Attorney for Petitioner.

JOHN A. HULL,
Major General, The Judge Advocate General,

DELFIN JARANILLA,
Attorney General of the Philippine Islands,
Of Counsel.